

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0093

Sales & Use Tax

Calendar Years 1994, 1995, & 1996

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The negligence penalty was assessed on an use tax assessment resulting from a Department audit for the calendar years 1994, 1995, & 1996.

The taxpayer is a national glass windshield replacement company. The taxpayer operates ten Indiana retail stores that replace residential and commercial windshields. The majority of the taxpayer's business is insurance claims. The taxpayer also installs windshields for auto dealers and shops.

I. **Tax Administration** – Penalty

DISCUSSION

The negligence penalty is the result of use tax assessed on the purchase of capital equipment consisting of tools and equipment.

The taxpayer argues the negligence penalty should be waived as the taxpayer acted in a good faith manner and the errors were inadvertent. The taxpayer did not have a self-assessing use tax accrual system for remitting use tax to the State of Indiana.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive with regard to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.